

MATTHEW J. SHIER (SBN: 72638)
JEREMY W. KATZ (SBN: 119418)
PINNACLE LAW GROUP LLP
425 California Street, Suite 1800
San Francisco, CA 94104
Telephone: (415) 394-5700
Facsimile: (415) 394-5003

Attorneys for
TV-32 DIGITAL VENTURES INC.,
Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re:

TV-32 DIGITAL VENTURES INC., a
California corporation,
Tax ID: 20-1198608

Debtor.

Case No. 09-58098 ASW 11

Chapter 11

**DEBTOR'S SUPPLEMENT TO
DECLARATION OF BOOKER T. WADE RE
STATUS OF CHAPTER 11 CASE AND
OPPOSITION TO MOTION TO APPOINT
CHAPTER 11 TRUSTEE**

Date: July 19, 2010
Time: 1:45 p.m.
Courtroom: 3020, 3rd Floor
The Honorable Arthur S. Weissbrodt

TO: THE HONORABLE ARTHUR S. WEISSBRODT, UNITED STATES BANKRUPTCY
JUDGE:

TV-32 DIGITAL VENTURES INC., Debtor and Debtor-in-Possession (the "Debtor"),
respectfully submits this Supplement to the DECLARATION OF BOOKER T. WADE RE
STATUS OF CHAPTER 11 CASE filed July 12, 2010 (See Docket No. 68):

1. As reflected in the various pleadings and the Reporter's Transcript of the
settlement agreement in the state action filed with this Court, this proceeding is a result of the
related state proceeding involving property division claims and counter-claims by Arlene Stevens

1 (“Stevens”) and Booker Wade (“Wade”) arising out of their long term business and non-marital
2 personal relationship. The competing claims were ostensibly resolved via the Settlement
3 Agreement entered into on January 22, 2009, mediated before Santa Clara County Superior Court
4 Presiding Judge Jaime Jacobs-May. The Settlement assigned some assets to Wade and some to
5 Stevens. Others were to be sold and the proceeds shared. Of the two most valuable assets, one –
6 the Woodside residence – was assigned to Stevens while the other – the commercial office
7 building at 1010 Corporation Way, Palo Alto – Wade maintains was assigned to him as the
8 designated arbitrator, Judge Silver, recently affirmed.

9 2. Despite the Settlement terms and Judge Silver’s contrary decision, Stevens
10 continues to insist she owns the Debtor and implicitly the Debtor’s property. In her Status Report
11 at page 1, Note 1, Stevens “...maintains her ownership of the Debtor.” Stevens requests the
12 appointment of a trustee to sell the property in the current market, even though the unanimous
13 conclusion of all three brokers experienced in the Palo Alto commercial office market is that a
14 current sale would impair SBA, unsecured creditors and even her own interests. As detailed in
15 the Wade Declaration, Stevens lacks concerns for all economic interests. She has dissipated and
16 concealed funds and forfeited valuable FCC licenses, yet she says Wade is imposing on her
17 financial devastation. Stevens has atypical motivations, one of which is simply to deny Wade the
18 benefit of the settlement bargain. Stevens candidly requests this Court to “...turn over
19 responsibilities associated with the Debtor to Stevens...” and ‘eliminate’ Wade’s influence.
20 Status Report, p. 3. She says that is in the best interests of creditors. However, under Stevens’
21 control assets are wasted.

22 3. The appointment of a trustee to displace the Debtor-in-Possession is an
23 extraordinary measure that runs counter to the overarching presumption that a Chapter 11 debtor
24 should remain in possession of its assets and operations while it is given the opportunity to
25 reorganize. In re Sharon Steel Corp., 871 F.2d 1217, 1225 (3d Cir. 1989). Because appointment
26 of a trustee is strongly disfavored, Stevens must meet a high evidentiary standard. Stevens must
27 show by clear and convincing *evidence* that one of the prongs of Section 1104 of the Bankruptcy
28

1 Code has been satisfied. See, e.g., In re Marvel Entertainment Group, Inc., 140 F.3d 463, 471 (3d
2 Cir. 1998).

3 4. In Cruzan v. Director, Missouri Department of Health, (1990) 497 U.S. 261, the
4 Supreme Court defined the applicable “clear and convincing evidence” standard to require
5 evidence that “produces in the mind of the trier of fact a firm belief or conviction as to the truth of
6 the allegations sought to be established, evidence so clear, direct and weighty and convincing as
7 to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the
8 precise facts in issue.” Herein, Stevens has not advanced any evidence of any facts. While she
9 argues that Wade will “never, ever” sell the property, that is an argument as to future action only,
10 not evidence and decidedly not evidence so strong as to defeat the entitlement of the Debtor.
11 Further, as noted in his Declaration, Wade has and continues to make efforts to lease and or sell
12 the property. Prior to and since the filing, he has retained a broker for marketing. More than a
13 year ago Wade retained Greg DeLong of CB Richard Ellis to market for sale or lease the premises
14 and DeLong continues to do so. Further, Stevens' brokers opined that the current distortion in the
15 credit market is the primary culprit in selling the property but that there are recent data points
16 indicating that a market turnaround will occur within two years. As such, there is a reasonable
17 opportunity to rehabilitate the Debtor. Wade requests the Court to permit him to proceed with the
18 reorganization process.

19 5. The Debtor reiterates that 30 days would be a reasonable time within which to file
20 its amended plan and disclosure statement.

21 Dated: July 15, 2010

PINNACLE LAW GROUP LLP

22
23 By /s/ Matthew J. Shier
24 Matthew J. Shier, Attorneys for
25 TV-32 DIGITAL VENTURES INC.,
26 Debtor and Debtor-in-Possession
27
28

1 **CERTIFICATE OF SERVICE**

2 I am employed in the office of a member of the bar of this Court in the City and County of
3 San Francisco, at whose direction this service was made. I am over the age of 18 and not a party
4 to the within action. My business address is 425 California Street, Suite 1800, San Francisco,
California 94104.

5 On July 15, 2010, I served the documents described as:

6 DEBTOR'S SUPPLEMENT TO DECLARATION OF BOOKER T. WADE RE
7 STATUS OF CHAPTER 11 CASE AND OPPOSITION TO MOTION TO APPOINT
CHAPTER 11 TRUSTEE

8 on the interested parties in this action by placing [] the original [X] true copies thereof enclosed
9 in sealed envelopes addressed as follows:

10 TV-32 DIGITAL VENTURES INC.
11 c/o Booker T. Wade
12 605 Forest Avenue
13 Palo Alto, CA 94301

Andrew Zighelboim
450 West Santa Clara Street
San Jose, CA 95113
azighelboim@collierparrish.com

13 The Honorable Arthur S. Weissbrodt
14 United States Courthouse, Room 3020
280 South First Street
San Jose, CA 95113-3099

15 **Attention: CHAMBERS COPIES**

16 [X] U.S. MAIL: Service was accomplished by placing the document(s) listed above in a
17 sealed envelope with postage thereon fully prepaid, in the United States mail at San
18 Francisco, California, addressed as set forth above.

19 [X] BY E-MAIL/NEF: Service was accomplished through the Notice of Electronic Filing
20 ("NEF") for parties and counsel who are registered ECF Users.

21 Office Of The United States Trustee
USTPRegion17.SJ.ECF@usdoj.gov,
22 ltroxas@hotmail.com

William J. Healy on behalf of Creditor Arlene
Stevens
whealy@campeaulaw.com

23 Rachel K. Stevenson on behalf of Creditor
24 Sterling Savings Bank
rnunes@abbeylaw.com

25 I declare under penalty of perjury under the laws of the United States of America, that the
26 foregoing is true and correct. Executed on July 15, 2010, at San Francisco, California.

27 /s/ Mike Terry
28 MIKE TERRY